

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF SOUTH DAKOTA  
ROOM 211  
FEDERAL BUILDING AND U.S. POST OFFICE  
225 SOUTH PIERRE STREET  
PIERRE, SOUTH DAKOTA 57501-2463

IRVIN N. HOYT  
BANKRUPTCY JUDGE

TELEPHONE (605) 224-0560  
FAX (605) 224-9020

April 8, 2003

Brian J. Donahoe, Esq.  
Counsel for Plaintiff  
100 N. Phillips Avenue, 9th Floor  
Sioux Falls, South Dakota 57104

Scott Perrenoud, Esq.  
Counsel for Defendant First Premier Bank  
P.O. Box 1157  
Sioux Falls, South Dakota 57101

Subject: **Graham v. Meinders**  
**(In re Roy and Joy Meinders)**  
Adversary No. 02-4062  
Chapter 13; Bankr. No. 00-40914

Dear Messrs. Donahoe and Perrenoud:

The matter before the Court is Defendant First Premier Bank's ("First Premier") Motion for Judgment on the Pleadings and for Summary Judgment. This is a core proceeding under 28 U.S.C. § 157(b)(2)(K). This letter decision and accompanying Order shall constitute the Court's findings and conclusions under Fed.R.Bankr.P. 7052. As set forth below, the Court concludes First Premier's motion must be granted.

**Facts.** Plaintiff Delores Graham is the Special Administrator of the Estate of Florence Docken (the "Docken Estate" and "Docken," respectively). Defendants Roy and Joy Meinders (collectively, "Debtors") are the debtors in the above-referenced chapter 13 case. Debtor Joy Meinders held a Power of Attorney for the personal and financial affairs of Docken. According to the Docken Estate, both before and after Docken's death, Debtors exercised control over, converted, and dissipated Docken's assets.

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On October 28, 1994, Debtors purchased real estate located at 311 South Jessica Avenue in Sioux Falls, South Dakota, on a contract for deed. On November 17, 1994, Debtors purchased real estate located at 521 North Minnesota Avenue in Sioux Falls, South Dakota. According to the Docken Estate, First Premier "facilitated" Debtors' acquisition of both properties (collectively, the "Properties").<sup>1</sup>

On May 9, 1997, Debtor Joy Meinders was charged with four counts of grand theft and one count of perjury. On November 18, 1997, Debtor Joy Meinders transferred all her rights and interest in any real estate to Debtor Roy Meinders. According to the Docken Estate, this was done on the advice of First Premier. On December 21, 1998, Debtor Joy Meinders was convicted of grand theft and was ordered to pay restitution of \$90,000.00 to the Estate. The judgment was entered as a civil judgment in Minnehaha County, South Dakota.

On October 30, 2000, Debtors filed for relief under chapter 13 of the bankruptcy code. On October 4, 2002, the Docken Estate commenced the instant adversary proceeding, by filing its complaint against Debtors, First Premier, and "all others claiming an interest in" the Properties. On October 29, 2002, the Court confirmed Debtors' plan of reorganization. The Court's confirmation of Debtors' plan was subject to the pending adversary proceeding.

On January 2, 2003, First Premier filed its Motion for Judgment on the Pleadings and for Summary Judgment. Both parties submitted briefs, and the matter was taken under advisement.

**Judgment on the Pleadings.** Judgment on the pleadings "is appropriate where no material issue of fact remains and the movant is entitled to judgment as a matter of law." *Faibisch v.*

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<sup>1</sup> The record in Debtors' chapter 13 case and Debtors' answer to the Docken Estate's complaint suggest otherwise. However, for the purposes of this motion, the Court will accept the Docken Estate's version of the facts.

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*University of Minnesota*, 304 F.3d 797, 803 (8th Cir. 2001). See also *Potthoff v. Morin*, 245 F.3d 710, 715 (8th Cir. 2001). The Court must "accept as true all facts pleaded by the non-moving party and grant all reasonable inferences from the pleadings in favor of the non-moving party." *Faibisch*, 304 F.3d at 803; *Potthoff*, 245 F.3d at 715.

**Constructive Trust.** By its third cause of action,<sup>2</sup> the Docken Estate seeks, among other things, to impose a constructive trust against First Premier's interest in the Properties. To impose such a trust, the Docken Estate must show clear and convincing evidence that:

(1) the constructive trustee gained; (2) that gain was by fraud, accident, mistake, undue influence, violation of a trust, or other wrongful act; (3) the constructive trustee has no superior right to the thing gained; and (4) the party seeking the constructive trust would have otherwise had the thing gained.

*Matter of Estate of Perkins*, 508 N.W.2d 597, 600 (S.D. 1993) (citing *Rosebud Sioux Tribe v. Strain*, 432 N.W.2d 259, 264 (S.D. 1988); *In re Walgamuth*, 144 B.R. 465, 474 (Bankr. D.S.D. 1992)).

While recognizing *Perkins* as controlling authority in its brief, the Docken Estate has pled no facts that would support such findings with respect to First Premier's dealings with Debtors. The Docken Estate argues First Premier gained an "increased interest" in the 521 North Minnesota Avenue property.<sup>3</sup> However, the facts, as pled by the Docken Estate, show First Premier lent Debtors money. In return, Debtors gave First Premier mortgages against the Properties. The Court has not found, and the Docken Estate has not pointed the Court to, any case in which a

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<sup>2</sup> The parties agree the Docken Estate does not seek relief against First Premier in its first two causes of action.

<sup>3</sup> The Docken Estate does not make the same argument regarding the 311 South Jessica Avenue property.

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constructive trust was imposed in connection with such a *quid pro quo* transaction. First Premier did not "gain" anything.

Moreover, even if it were to interpret the first element as requiring only that First Premier "acquired" an interest in the Properties, the Court cannot say First Premier acquired that interest, i.e., the mortgages, "by fraud, accident, mistake, undue influence, violation of a trust, or other wrongful act." The Docken Estate does not appear to claim First Premier is guilty of any intentional wrongdoing.<sup>4</sup> Its only argument seems to be that given Debtors' financial status and credit history, it was "grossly negligent" or a "mistake" for First Premier to lend Debtors money. However, even assuming that is the sort of "mistake" the court in *Perkins* had in mind, it is the act of acquiring the mortgages, not the act of lending Debtors the money, that is at issue. Nothing in the Docken Estate's complaint suggests that, having lent Debtors money, it was grossly negligent or a mistake for First Premier to acquire the mortgages in return.

As for the relative rights of the parties to the "thing gained," the Docken Estate argues First Premier has no equal right to the Docken Estate's money. That is true. However, the mortgages, not the Docken Estate's money, are the thing gained in this case, if indeed anything can be said to have been gained. First Premier, having lent Debtors money, has every right to the mortgages. The Docken Estate, not having lent Debtors money, has no right to them. Thus, the Court cannot say First Premier has no superior right to the mortgages.

Finally, the Docken Estate argues, but for First Premier's facilitation of Debtors' "property transactions," it would be better able to recover the funds used to purchase the Properties or

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<sup>4</sup> In its brief, the Docken Estate says it "does not claim . . . that First Premier . . . intentionally aided [Debtors] in transferring funds and property in anticipation of a criminal [conviction] and later civil restitution order."

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to enforce its judgment lien. That may or may not be true.<sup>5</sup> However, the focus of the fourth element is on the "thing gained," i.e., the mortgages. Nothing in the Docken Estate's complaint suggests those mortgages were not given to First Premier in return for the funds First Premier lent Debtors. Had First Premier not lent Debtors the funds, the mortgages would not have come into being. That being so, the Court cannot say the Docken Estate would have otherwise had the mortgages.<sup>6</sup>

**Estoppel.** By its fourth cause of action, the Docken Estate seeks to estop First Premier from asserting that its liens against the Properties are superior to any judgment lien the Docken Estate might have against the Properties. To achieve that result, the Docken Estate must establish:

(1) a false representation or a concealment of material facts; (2) the victim must have been without knowledge of the real facts; (3) the representation or concealment must have been made with the intent that it be acted on; and (4) the victim must have relied on the misrepresentation or concealment creating prejudice or injury.

*State v. Peterson*, 657 N.W.2d 698, 703 (S.D. 2003) (citing *In re*

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<sup>5</sup> The Docken Estate does not explain how it would be easier to enforce its judgment lien, when according to its complaint, Debtors would not have been able to acquire the Properties without the loans from First Premier. The explanation may lie in the fact that, as noted above, the record in Debtors' chapter 13 case and Debtors' answer to the Docken Estate's complaint suggest First Premier was not involved in Debtors' initial acquisition of the Properties. However, that explanation is not supported by the allegations of the Docken Estate's complaint.

<sup>6</sup> The Court would reach the same conclusion with respect to each of the elements of constructive trust, even if contrary to the allegations in the Docken Estate's complaint, First Premier lent Debtors the funds, not at the time Debtors purchased the properties, but in connection with a refinancing shortly before Debtor Joy Meinders's conviction.

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*Loomis*, 587 N.W.2d 427, 430 (S.D. 1998)).

There can be no estoppel if any of these elements are lacking, or if any of them have not been proved by clear and convincing evidence.

*Loomis*, 587 N.W.2d at 430 (citing *Crouse v. Crouse*, 552 N.W.2d 413, 417 (S.D. 1996)).

Again, the Docken Estate has pled no facts that would support such findings with respect to First Premier's dealings with Debtors. In its brief, the Docken Estate states this cause of action is based on the fact that First Premier was aware or should have been aware of the criminal indictment of Debtor Joy Meinders for embezzlement of her mother's assets. However, nothing in the Docken Estate's complaint would support a finding that First Premier made a false representation or concealed a material fact in that regard. Nothing in the complaint would support a finding that the Docken Estate was itself without knowledge of Debtor's criminal indictment. Nothing in the complaint would support a finding that First Premier intended that the Docken Estate act on any false representation or concealment. Finally, nothing in the complaint would support a finding that the Docken Estate relied upon any false representation or concealment and was thereby prejudiced or injured.

**Declaratory Judgment.** By its fifth cause of action, the Docken Estate seeks, among other things, a declaratory judgment as to the relative rights of all parties claiming any interest in the Properties. The Docken Estate has not identified any parties other than Debtors and First Premier that might have an interest in the Properties or pled sufficient facts to permit the Court to make such a determination.<sup>7</sup> Debtors' rights and interests are not before the Court at the moment. As for First Premier, the Docken Estate recognizes in its complaint that First Premier claims first

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<sup>7</sup> The Docken Estate does not explain how the Court can determine the rights of parties who have not been identified or given proper notice of this proceeding.

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mortgage liens against the Properties. Based on the above discussion of the Docken Estate's arguments regarding constructive trust and estoppel, the Court is left with no reason to question the priority of First Premier's mortgages.

**Conclusion.** For the foregoing reasons, First Premier's motion is granted. The Court will enter an appropriate order.

Sincerely,



Irvin N. Hoyt  
Bankruptcy Judge



INH:sh

cc: Dale A. Wein, Chapter 13 Trustee  
A. Thomas Pokela, Esq.  
adversary file (docket original in adversary; serve copies on counsel)

**NOTICE OF ENTRY**  
Under F.R.Bankr.P. 9022(a)  
**Entered**

**APR 09 2003**

Charles L. Nail, Jr., Clerk  
U.S. Bankruptcy Court  
District of South Dakota

I hereby certify that a copy of this document was electronically transmitted, mailed, hand delivered or faxed this date to the parties on the attached service list.

**APR 09 2003**

Charles L. Nail, Jr., Clerk  
U.S. Bankruptcy Court, District of South Dakota  
By DM

Brian J. Donahoe  
100 North Phillips Avenue  
Suite 901  
Sioux Falls, SD 57104

Ray & Joy Meinders  
520 S. Conklin Avenue  
Sioux Falls, SD 57103

Scott M. Perrenoud  
PO Box 1157  
Sioux Falls, SD 57101

A. Thomas Pokela  
PO Box 1102  
Sioux Falls, SD 57101

Dale A. Wein  
Bankruptcy Trustee  
PO Box 1329  
Aberdeen, SD 57402-1329